

Written testimony of Casey Burgat
Senior Governance Fellow, R Street Institute
Before the United States Senate
Committee on the Judiciary, Subcommittee on the Constitution
June 18, 2019

Chairman Cruz, Ranking Member Hirono and members of the subcommittee:

Thank you for the invitation to testify before the subcommittee. My name is Casey Burgat, and I am a senior governance fellow at the R Street Institute. It is both my job and my passion to identify, study and write on potential reforms Congress might adopt to reassert itself as the First Branch of government.

One commonly advanced reform idea, and the subject of this subcommittee hearing, is limiting by constitutional amendment the number of terms members of Congress can serve. It is my goal today to discuss the very real downsides that would result from the implementation of congressional term limits. Though I understand the logic and intention of the measure, decades of political science and public administration research show that term limits would hamper Congress' ability to do its job and would exacerbate some of the very problems their adoption is intended to rectify.

We live in an increasingly complex world, one in which our lawmakers are responsible for developing solutions to pressing and intricate societal problems while also appropriating and overseeing a \$4.1-trillion-dollar federal budget. Even the most seasoned, experienced lawmakers struggle to craft effective policies and often cannot fully anticipate the unintended consequences of each vote they take. Still, we need our most effective lawmakers to stay in Congress. Mandating that even the most effective, most supported members must leave the chamber would decrease Congress' capacity to do its job in our system of government.

I urge the subcommittee to consider these negative consequences as it deliberates this proposal.

The idea of term limits is not new. Proposals to cap the number of terms members can legally serve have been introduced in nearly every Congress going back to 1943. They are an evergreen reform.

It is completely understandable that the idea is supported by a record-high 75 percent of the public.¹ As you all know better than most, only 20 percent of Americans approve of the way Congress is handling its job.² Voters feel unheard by the very officials they chose to be their voice. They feel

¹ Rasmussen Reports. (2016, October 26). "More Voters Than Ever Want Term Limits for Congress," http://www.rasmussenreports.com/public_content/politics/general_politics/october_2016/more_voters_th_an_ever_want_term_limits_for_congress

² Gallup. (2019). "Congress and the Public: Congressional Job Approval," <https://news.gallup.com/poll/1600/congress-public.aspx>

drowned out by the monied special interests and ‘swampy’ ways of doing business that are common in Washington. They feel unrepresented by their representatives.

It follows, then, that if we limit the number of terms a member can serve, perhaps we can stem the corruptive tendencies that are assumed to inevitably creep into even the best-intentioned lawmakers. At the very least, we can kick out unpopular, seemingly corrupt members who have made a career out of being elected. In short, term limit proponents suggest that adding such an amendment will force representatives to truly represent the people. If Congress is unpopular and its members are corrupt, it makes sense to kick them out and replace them with fresh legislators who have not been stained by the swamp.

Among others, proponents of term limits argue that their implementation would accomplish two primary objectives:

1. Eliminate career politicians who, by virtue of their safe reelections, have little incentive to remain responsive to their constituents.³ Term limits, advocates suggest, would increase diversity in Congress and return it to the ‘citizen legislature’ envisioned by the framers rather than the current model dominated by rich elites.⁴
2. Decrease member reliance on special interest groups and big money donors since lawmakers would feel less compelled to court their support to remain in office.

Because term limits have never existed at the federal level, we must turn to state-level experiences with term limits in order to anticipate their consequences on Congress. The past several decades of political science and public administration research on this topic is clear: The hypothetical upshots of term limits have not been realized. In fact, they have often worsened the very issues that this reform intends to address.

I’d like to address both of these hypothetical benefits in contrast with the consequences that state-level experiences have shown to be likely.

In terms of the composition of candidates, multiple studies—including two that survey state legislators in all 50 states—dispel the prediction that term limits will increase the diversity of candidates or representatives. When comparing the makeup of legislatures in term-limited and non-term-limited states, researchers found no meaningful differences across a host of variables, including occupation, family income, age, race, ethnicity, religious affiliation or candidate ideology.⁵ The authors conclude

³ Glazer, A., & Wattenberg, M. (1996). Promoting legislative work: A case for term limits. *Legislative Term Limits: Public Choice Perspective*, B. Grofman Ed., Kluwer Academic Publishers, Boston.

⁴ Petracca, Mark P. (1991). “The Poison of Professional Politics.” Cato Institute Policy Analysis, No. 151.

⁵ Carey, J. M., Niemi, R. G., Powell, L. W., & Moncrief, G. F. (2006). The effects of term limits on state legislatures: a new survey of the 50 states. *Legislative Studies Quarterly*, 31(1), 105-134.

that “Despite all the speculation about term limits producing a new breed of legislator, our results show that not much change in the composition of legislatures can be attributed to the reform.”⁶

While we find some support for the prediction that term-limited legislators spend less time on reelection-related activities such as fundraising, these effects are typically only found during a legislator’s last term. Prior to the final cycle, legislators in term-limited states spend similar amounts of time on reelection behaviors, such as dialing for dollars. Additionally, term-limited legislators reveal equally strong ambitions to remain in elected office in other capacities, a finding at odds with the assumption that term limits would produce lawmakers with greater willingness to return to private life after serving in Congress.⁷

The revolving door from Congress to lobbying shops is not likely to slow, either. Many lawmakers forced out of the chamber will want to cash in on their experience and connections instead of letting them go to waste. Wouldn’t it be a better return on the public’s investment to allow that earned experience to stay in Congress, where the people have a say in reelection, rather than let it be used to peddle special interests with much less accountability?

More important, however, is the consistent finding that once the electoral connection is severed, term-limited legislators are actually less—not more—concerned with the needs of their constituents and individual districts. Term-limited lawmakers have been found to spend less time personally keeping in touch with their constituents, engage in less constituent casework and exert less energy to secure projects for their districts.⁸

Moreover, researchers find that once lawmakers lose reelection motivation, they become more concerned with their personal policy positions and less concerned with the wants of those who elected them. This effect has been labeled a ‘Burkean shift,’ where members turn away from the interests of their constituencies to favor their own personally held beliefs.⁹

Term limits have also been shown to decrease lawmakers’ efforts to develop and advance policies, reduce their willingness to show up for roll-call votes¹⁰ and discourage creation of the bipartisan

⁶ Carey, J. M., Niemi, R. G., & Powell, L. W. (1998). The effects of term limits on state legislatures. *Legislative Studies Quarterly*, 271-300, p. 280.

⁷ Carey, J. M., Niemi, R. G., Powell, L. W., & Moncrief, G. F. (2006). The effects of term limits on state legislatures: a new survey of the 50 states. *Legislative Studies Quarterly*, 31(1), 105-134, p. 107.

And

Steen, J. A. (2006). The impact of state legislative term limits on the supply of congressional candidates. *State Politics & Policy Quarterly*, 6(4), 430-447.

⁸ Carey, J. M., Niemi, R. G., Powell, L. W., & Moncrief, G. F. (2006). The effects of term limits on state legislatures: a new survey of the 50 states. *Legislative Studies Quarterly*, 31(1), 105-134, p. 118-123.

⁹ Ibid.

¹⁰ Wright, G. C. (2007). Do term limits affect legislative roll call voting? Representation, polarization, and participation. *State Politics & Policy Quarterly*, 7(3), 256-280.

coalitions and relationships within the chamber that are often projected by term limit supporters.¹¹ Perhaps contrary to public opinion, maintaining a strong election incentive for lawmakers has been shown to hold them accountable effectively. When that incentive is eliminated, lawmakers are less motivated to keep the needs and wants of their constituents in the forefront of their minds, and tend to increase spending and borrowing levels since they cannot be punished electorally for their actions.¹²

Furthermore, using qualitative and quantitative data, studies consistently show that once term limits are adopted at the state level, lawmakers are *more* likely to defer to actors outside of the chamber, including lobbyists, bureaucrats, governors or state executives, and even long-serving legislative staff. One study, for example, interviewed lobbyists themselves and ultimately found a “strong consensus among these lobbyists that term limits have caused the state political influence structure to shift away from the legislature and toward the governor, administrative agencies, and interest groups.”¹³

This turning outward is wholly understandable. Legislators are incredibly time-constrained and are responsible for resolving an endless catalog of pressing problems and sifting through myriad legislative solutions. Because they are pulled in so many different directions, lawmakers and their staffs do not have the informational capacity to maintain expertise on all of the proposals on which they will vote.¹⁴ Thus, they turn to sources such as well-resourced lobbying shops and executive agencies staffed with long-serving bureaucrats who maintain in-house expertise through specialized experience. In either case, the legislature and individual lawmakers thereby become dependent on outsiders for information and policy alternatives that often come with partisan agendas.

In addition to increased deference, mandating lawmakers to vacate their positions has been strongly linked to decreases in legislatures’ capacities to execute their primary functions. States with term limits—whether because of a dearth of experience or willingness on behalf of their lawmakers—have

¹¹ Sarbaugh-Thompson, M., Thompson, L., Elder, C. D., Comins, M., Elling, R. C., & Strate, J. (2006). Democracy among Strangers: Term Limits' Effects on Relationships between State Legislators in Michigan. *State Politics & Policy Quarterly*, 6(4), 384-409.

And

Kurtz, K. T., Cain, B. E., & Niemi, R. G. (Eds.). (2009). *Institutional Change in American Politics: The case of term limits*. University of Michigan Press.

¹² Erler, H. A. (2007). Legislative term limits and state spending. *Public Choice*, 133(3-4), 479-494.

¹³ Moncrief, G., & Thompson, J. A. (2001). On the outside looking in: Lobbyists' perspectives on the effects of state legislative term limits. *State Politics & Policy Quarterly*, 1(4), 394-411, p. 394.

¹⁴ Miller, S. M., Nicholson-Crotty, J., & Nicholson-Crotty, S. (2018). The Consequences of Legislative Term Limits for Policy Diffusion. *Political Research Quarterly*, 71(3), 573-585.

been shown to conduct less effective oversight,¹⁵ accept governor initiatives more willingly and less frequently construct complex policy solutions within the legislature.¹⁶

In short, term limits have proven to be a brain drain on legislatures, decreasing capacity to perform their duties as a co-equal branch of government. Policymaking is a hard job, and an often thankless one at that. There are very few easy, clear-cut decisions in Congress, and policy alternatives are often fraught with unintended consequences that appear long after initial votes. Experience and effectiveness are correlated—a relationship that scholars have labeled the ‘competency effect.’¹⁷ Experience matters and should be welcomed rather than ushered away from the institution where it will do the most good.

This is particularly true within Congress, where there is an unbelievably steep learning curve. Congress operates under a complex set of procedures, rules and precedents. These are learned on the job. When legislatures are full of inexperienced lawmakers, special interests and executives fill in the informational voids and the Congress is less equipped to do its job. Ultimately, the public suffers.

Finally, term limits take away from voters the fundamental right to choose their representatives. Term limits automatically kick out lawmakers without any regard for how effective they are on the job or how supported they are by their constituents. If voters feel unheard or poorly represented by their elected officials, the mechanism is there to remove them. Neither Congress’ job performance nor the public’s dissatisfaction with its work will be improved by automatically forcing out duly elected, experienced members. In fact, the effects of term limits are more likely to harm the institution than help it.

Voters hold the ultimate power to elect or remove their representatives. That power should remain in their hands.

Chairman Cruz, Ranking Member Hirono and members of the subcommittee, thank you again for the opportunity to testify. I look forward to answering any questions you may have.

¹⁵ For example, see: Berman, David R. 2005. "Effects of Legislative Term Limits in Arizona." Berman, David R. 2005. "Effects of Legislative Term Limits in Arizona," [http:// www.ncsl.org/Portals/ 1 /documents/jptl/casestudies/Arizonav2.pdf](http://www.ncsl.org/Portals/1/documents/jptl/casestudies/Arizonav2.pdf)

And

Straayer, John, and Jennie Drage Bowser. 2004. "Colorado's Legislative Term Limits," <http://www.ncsl.org/Portals/1/documents/jptl/casestudies/Coloradov2.pdf>

¹⁶ Baker, T. J., & Hedge, D. M. (2013). Term Limits and Legislative-Executive Conflict in the American States. *Legislative Studies Quarterly*, 38(2), 237-258.

¹⁷ Alt, J., Bueno de Mesquita, E., & Rose, S. (2011). Disentangling accountability and competence in elections: Evidence from US term limits. *The Journal of Politics*, 73(1), 171-186.